



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chelangat & another v Kenya Union of Post Primary Education Teacher, KUPPET & 9 others (Petition E104 of 2026) [2026] KEELRC 925 (KLR) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 925 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**PETITION E104 OF 2026**

**JK GAKERI, J**  
**APRIL 16, 2026**

**BETWEEN**

**NANCY CHELANGAT ..... 1<sup>ST</sup> PETITIONER**

**WESLEY CHELULE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KENYA UNION OF POST PRIMARY EDUCATION TEACHER,**  
**KUPPET ..... 1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF TRADE UNIONS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WICKS NJENGA MWETHI ..... 1<sup>ST</sup> INTERESTED PARTY**

**PAUL MWINGI ..... 2<sup>ND</sup> INTERESTED PARTY**

**HON CATHERINE WAMBILIANGA ..... 3<sup>RD</sup> INTERESTED PARTY**

**MOSES NTHURIMA ..... 4<sup>TH</sup> INTERESTED PARTY**

**MAURICE AKELO MISORI ..... 5<sup>TH</sup> INTERESTED PARTY**

**EDWARD OBWOCHA ..... 6<sup>TH</sup> INTERESTED PARTY**

**SAMMY CHELANGA ..... 7<sup>TH</sup> INTERESTED PARTY**

**JULIUS KORIR ..... 8<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. Before the Court for determination is the Applicant's Notice of Motion dated 25<sup>th</sup> March 2026 filed under certificate of urgency seeking orders that:-



1. Spent.
  2. Spent.
  3. Pending inter partes hearing of the petition a conservatory order do issue staying the 1<sup>st</sup> Respondent's decision dated 19<sup>th</sup> March 2026 communicating the cleared candidates for the 1<sup>st</sup> Respondent's National elections which notice unjustifiably and unlawfully disqualified eligible candidates from contesting.
  4. Spent
  5. Spent
  6. Pending inter partes hearing of the Petition a conservatory Order be issued staying the conduct of the 1<sup>st</sup> Respondents National elections scheduled for 18<sup>th</sup> April 2026 or any other date.
  7. Any further relief that this, Honourable Court may deem fit and just to grant.
2. The motion is expressed under various articles of *the Constitution* of Kenya provisions of the *Employment and Labour Relations Court Act* and *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and based on the grounds outlined on its face and the Supporting Affidavit of Nancy Chelangat who deposes that she had authority of the 2<sup>nd</sup> Petitioner to swear the affidavit.
  3. The affiant deposes that the 1<sup>st</sup> Respondent had commenced the process of conducting National elections scheduled to take place on 18<sup>th</sup> April 2026 within the context of the impugned provisions of its constitution on eligibility for national office and had cleared candidates to contest.  
That the 2<sup>nd</sup> Respondent declined to intervene when guidance was sought.
  4. That the petition was challenging the legality and constitutionality of Articles 7.0 (a)(ii), 8.2.0(e), 13 (a)(ii) and (iii) and 12.0(b) of the Respondent's Constitution and Rules.
  5. According to the affiant, the foregoing Articles of the 1<sup>st</sup> Respondent's constitution were exclusionary and accorded undue advantage to incumbency. That once national elections are concluded under *the constitution*, the issues raised will have crystalized and render the petition nugatory.

#### **1<sup>st</sup> Respondent's and Interested Parties Case.**

6. By a Replying Affidavit sworn on 4<sup>th</sup> April 2026, Mr. Akelo M. T. Misori deponed that the provisions being challenged were a consequence of an amendment of *the constitution* in 2024 and were sanctioned by the Annual Delegates Conference and endorsed by the Court.
7. The affiant further deponed that Nairobi ELRC Petition No. 019 of 2025 was pending as was the decision in the Nairobi ELRC No. E095 of 2025 consolidated with Nairobi ELRC No. E048 of 2025 and the doctrine of subjudice applied and the Petitioner's intent was derail the National elections scheduled for 18<sup>th</sup> April 2026. That the 1<sup>st</sup> Respondent had a lawful constitution under which to conduct elections.
8. The affiant averred that the impugned provisions did not extinguish participation but regulated eligibility and union membership after retirement was a common practice and consistent with the law. That the motion did not meet the threshold for the grant of conservatory orders.
9. Contemporaneously, the 1<sup>st</sup> Respondent filed a Notice of Preliminary objection dated 7<sup>th</sup> April 2026 objecting to the grounds that the suit on the issues canvassed in support of the petition were res judicata



the same having been directly and substantially in issue between parties claiming under the same title in *Kinyua v Secretary General, Kenya Union of Post Primary Education Teachers (KUPPET) & another* [2025] KEELRC 3733 (KLR).

10. Counsel for the Respondent cited several decisions on the doctrine of res judicata including *Kenya Commercial Bank Ltd v Muiri Coffee Estate Ltd & 3 others* (2016) KESC 6 (KLR) for the proposition that it is a doctrine of substantive law, and the decisions in *John Florence Maritime Services Ltd & another v Cabinet Secretary Transport and Infrastructure & 3 others* (2021) KESC 39 (KLR) on its elements or prerequisites, and the decisions in *Mwikali & another v Mutungi & 3 others* (2026) KECA 231 (KLR) and *Kinuva v Secretary General KUPPET & another* (2025) KEELRC 3753 (KLR)
11. It is trite law that once a Preliminary Objection is filed, it must be disposed of expeditiously owing to its potential to terminate the suit without further proceedings.
12. Before delving into the merits of the Notice of Preliminary Objection, it is imperative to determine whether the 1<sup>st</sup> Respondent's Notice meets the threshold of a Preliminary Objection as enunciated by the Court of Appeal in *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Ltd* [1969] EA 696 where Law JA:-

So far as I am aware a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a Preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”
14. Sir Charles Newbold P. added as follows:-

a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
15. In *Attorney General & another v Githinji & another* [2016] KECA 817(KLR) the Court of Appeal summarized the test as follows:-

The test to be applied in determining whether the appellant's Preliminary Objection met the threshold or not is what Sir Charles Newbold set out above in the Mukisa Case (supra). This is first that the Preliminary Objection raises a pure point of law, second that there is demonstration that the facts pleaded by the other side are correct; and third that there is no fact that needs to be ascertained.”
16. Clearly, since the 1<sup>st</sup> Respondent and Interested Parties are challenging the Courts jurisdiction to hear and determine the instant petition on the ground of being res judicata ELRC Petition No. E095 of 2025, the Court is satisfied that the Notice of Preliminary Objection meets the threshold in the Mukisa Case (supra).
17. It is trite law that res judicata is a principle of substantive law (see *Kenya Commercial Bank Ltd v Muiri Coffee Estate Ltd & another* [2016]eKLR).
18. The pith and substance of this Ruling is whether the Petitioners petition dated 25<sup>th</sup> March 2025 is res judicata Nairobi ELRC Petition No. E095 of 2025.
19. The principles that govern res judicata are well settled. Under Section 7 of the [\*Civil Procedure Act\*](#).



20. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigation under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
21. In *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others* the Court restated the essentials of res judicata as follows:-
  - a. The suit or issue was directly and substantially in issue in the former suit.
  - b. That former suit was between the same parties or parties under whom they or any of them claim.
  - c. Those parties were litigating under the same title.
  - d. The issue was heard and determined in the former suit.
  - e. The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
22. The justification of the doctrine of res judicata was explained in *John Florence Maritime Services Ltd v Cabinet Secretary for Transport and Infrastructure & 3 Others* [2015]eKLR.
23. Applying the foregoing principles to the circumstances of this case, it is common ground that Mr. Anthony Ndegwa Kinyua, a member of the 1<sup>st</sup> Respondent filed Nairobi ELRC Petition No. E095 of 2025 against the Secretary General of the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent herein, challenging a series of amendments to the union’s Constitution by the Annual Delegate Conference held in Vihiga County on 20<sup>th</sup> December 2024.
24. According to the Petitioner, there was no proper notice and public participation, voting irregularities, there were intimidation and coercion of delegates, discriminatory and exclusionary provisions in the amended constitution, excessive and unreasonable nomination fees, removal of mandatory retirement age cap, pro-rata Delegate Representation system, Registrars of Trade Unions acknowledgement of objections, contradictory action, approval of the amendments and violation of constitutional and statutory rights.
25. The Petitioner averred that the flawed amendment process and the substance of the amended provisions violated his Constitutional rights to public participation, equality, non-discrimination, fair labour practices and fair administrative action the amendments were intended to entrench the power of incumbency, limit competition in union elections and undermine democratic structure of the union.
26. Reliance was placed on Articles 19, 22, 10, 27, and 41 of *the Constitution* of Kenya and provisions of the *Labour Relations Act*.
27. The instant Petition dated 25<sup>th</sup> March 2025 by the two Petitioners is grounded on Articles 10, 19, 20, 27, 36 and 41 of *the Constitution* of Kenya and various articles of the 1<sup>st</sup> Respondent’s Constitution are challenged on the grounds of exclusionary and in violation of democratic participation, violation of equality and equal protection, disproportionate limitation and failure to satisfy Article 24 of *the Constitution* of Kenya, being inconsistent with sections 4 and 31 of the *Labour Relations Act* representation integrity and character of a trade union.



28. Finally, the reliefs sought include having the provisions of Article 8.2.0 (e ) 7.0 (a)(ii), 12b(b), 13(a)(ii) and(iii) of the 1<sup>st</sup> Respondent’s constitution declared null and void, eligibility to contest opened up and amendment of the 1<sup>st</sup> Respondent’s constitution prior to the upcoming election.
29. In ELRC Petition No. E095 of 2025, the Petitioner prayed for a declaration that the amendments to the union’s constitution be declared unconstitutional, illegal, null and void, injunction to restrain implementation of the amended Constitution and future amendments among others.
30. Thus, whereas the Petitioner in that case sought the annulment of all the amendments to the constitution, the Petitioner’s herein are seeking nullification of selected Articles of the same constitution.
31. A panoramic view of both suits reveal that the issues being raised in the instant Petition were raised in ELRC Petition No. E095 of 2025, the only distinction, in the Court’s view, being that whereas ELRC Petition No. E095 of 2025 encompassed all the amendments including nomination fees, the instant Petition addresses selected amendments and is thus narrower in scope but with a wider panoply of reliefs.

In the Court’s view, the issues in both cases are similar and were litigated in the earlier suit.

32. Second it is clear that the Petitioners in both cases were fully paid members of the 1<sup>st</sup> Respondent and although in Petition No. E095 of 2025 the 1<sup>st</sup> Respondent was the Secretary General of the 1<sup>st</sup> Respondent in Petition No. E104 of 2026. He was sued in his capacity as the Chief Executive Officer or Secretary General of the Union.

Thus, in the Court’s view, the parties were the same and litigating under the same title.

Similarly, Petition No. E095 of 2025 was heard and determined and a judgment delivered.

33. The Court found that none of the Petitioner’s prayer had merit and dismissed the suit. The Court stated:-

For the avoidance of doubt all the prayers sought in this petition have no merit and are dismissed for want of jurisdiction and secondly for lack of merit”.

Finally, the Court heard and determined Petition No. E095 of 2025 and further held that it had not jurisdiction to hear and determine the Petition.”

34. The court expressed itself as follows:-

This suit lacks merit and would not have seen the right of day even if it was not struck out for lack of jurisdiction.”

35. In the circumstances, the Court is satisfied that the plea of res judicata is available to the 1<sup>st</sup> Respondent and Interested parties. ELRC Petition No. E104 of 2026 is res judicata ELRC Petition No. E095 of 2025 and thus unsustainable and is struck out with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16<sup>TH</sup> DAY OF APRIL, 2026**

**DR. JACOB GAKERI**

**JUDGE**

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

